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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,543	02/17/2006	Wilhelm A. Keller	068754-0311	4638
22428 7590 09/15/2009 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER SOOHOO, TONY GLEN				
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1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,543

Applicant(s)

KELLER, WILHELM A.

Examiner

Tony G. Soohoo

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 20-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, in the reply filed on 06/05/2009 is acknowledged.
2. Claims 16, 20-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/05/2009.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-15, 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, there is no antecedent basis for "the transfer area".

In claim 2, line 3, there is no antecedent basis for "the dispensing means".

In claim 6, line 2, there is no antecedent basis for "the enclosure bottom".

In claim 7, line 3, there is no antecedent basis for "the cap enclosure"

In claim 8, lines 6-6 the claim is unclear in the structure(s) are being referred to (or lacks antecedent basis for the naming) : "the common inlet/outlet portion", "the inlets/ outlets of the containers", "both inlets/outlets of the containers to each other", "all inlet/outlets".

In claim 13, line 2 there is no antecedent basis for "the trust rod" (claim 12, 1st introduces a thrust rod, but is not dependent thereon). Also in claim 13 there is no antecedent basis for "the mixing rod", and "the powder container". (claim 4 1st introduces a mixing rod, but is not dependent thereon). The failure provide antecedent basis for the elements renders the claim so unclear in the relative structure of the turning known and the mixing rode that the under side and piston relationship can not be positively determined for examination upon its merits.

Claim 15 is vague the last line "or another part" that the scope of this structure can not be determined.

Claim 15 fails to provide proper antecedent basis for "the common inlet/outlet portion", and "the valve assembly". (The valve assembly was first introduced in claim 5, but is not dependent thereon).

In claim 17 the term "singulated" is unclear in meaning or structure.

Claim 18 fails to provide proper antecedent basis for "the second and third containers" (the third container has not been positively claimed), and on line 5, "the other containers". The lack of positive antecedent basis for the elements renders the number of structural elements and their relative positions and connections so unclear that it precludes and hinders examination of the claimed structure for a consideration upon its merits.

Claim interpretation

5. In claim 1 the reaction of “means for mixing... characterized in that ...” has not properly invoked 35 USC 112, 6th paragraph. The recitation of particular structure of the respective containers, closure or connecting channel, transfer area has modified the means plus function to particular structural limitations which does not pass the three prong analysis outlined in MPEP 2181.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 5, 10, 11, 12, 15, 17, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Voellmicke et al 7175336.

a. The Voellmicke reference discloses a storing, mixing, and dispensing device with a respective containers (for example 62, 72, 82, fig 5, generally syringes connected to 9, 11, reservoir 82, or seen in figure 26, 27) which are

located side by side (i.e. the top and bottom ends point up/down and the longitudinal sides face beside one another); each of the components have individual components within the containers; and an assembly closure/connecting channel (generally 9/11 and 3; 21, 23) which may also be made in the form of a valve assembly, (column 16, line 30- column 17, line 62) to provide a connection between the outlet area of the container 62, 72, of the liquid inlet of the container 82.

b. Regarding claim 5, note the selective valve assembly valve assembly, (column 16, line 30- column 17, line 62), figures 19A- figure 22.

c. Regarding claim 10, note use of the 1st component being powdery in the container 82, is directed to the intended material to be worked upon by the device and does not further provide a structural limitation to the structure of the storing/mixing/delivery device itself. Nonetheless the Voellmicke disclose the use of the device of powder material, col 12, lines 57-65; column 13, lines 46-68, in the retention chamber (1st component container).

d. Regarding claim 11, the recitation of Vacuum is directed to an operational step and does not require the structure of a vacuum pump. Also note that the 2nd component container 62/72 diameter size is greater (at 74, 76) than the rest of the chamber (near 63 73) .

e. Regarding claim 12, note the thrust rod 65, 85, 75, 305, and figs 26, 27) to urge the piston of the retention chamber and syringes.

- f. Regarding claim 15, note the valve assembly includes the connecting channel and transfer area which have couplings 13, 15, to attach to the 2nd container syringes 62, 72.
- g. Regarding claim 17 note that the device is made of single parts which are assembled.
- h. Regarding claim 19 note the coded coupling means, (indicia RED GREEN, column 8, lines 59-68)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voellmicke et al 7175336 in view of McGill et al. 7524103.

Voellmicke et al 7175336 discloses all of the recited subject matter as established above with the exception of a mixing rod with mixing member being a perforated or cut out mixing disk.

The reference to McGill et al reference teaches a mixing/dispersing device having a piston 718, and a perforated mixing disk (712, 714) to provide mixing of the contents of the chamber via a manipulation of the rod 726, where In an alternative embodiment, the rod 726 may be threaded and designed

to mate with a threaded bracket (not shown) attached above the cover. Also, the McGill reference teaches that the rod, in alternative embodiment may further have a bracket with a quick release mechanism thereby providing a predetermined breaking point, column 12, line 7-10, for engagement or disengagement with the rod

In view of the McGill reference, in light of the knowledge gleaned by the prior art, it would have been obvious to a person having ordinary skill in the art to substitute for the retention piston chamber 82 of Voellmicke with a chamber having a piston, mixing rod handle, and a quick release mechanism connectable to a bracket to the mixing rod so as to provide a convenient manner to further manipulate and ensure a fully mixed material in the retention chamber.

Allowable Subject Matter

10. Claims 6-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2003/0032964, and US 6550957, 5779357, 5340364.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/
Primary Examiner, Art Unit 1797

Tony G Soohoo
Primary Examiner
Art Unit 1797
